

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT NASHVILLE

FILED

April 12, 1996

Cecil W. Crowson
Appellate Court Clerk

ESTATE OF MAXIE RAYMOND CHILDRESS, JR.,)
)
Plaintiff/Appellant,)
) Marshall Probate No. 7-95
)
v.) C.A. No. 01A01-9509-PB-00415
)
MARY ANN PAYNE,)
)
Defendant/Appellee.)

**APPEAL FROM THE MARSHALL COUNTY PROBATE COURT
THE HONORABLE DANIEL PHILLIP WHITAKER, SPECIAL JUDGE**

William M. Haywood
Lewisburg, Tennessee
Attorney for Appellant

Rondal T. Wilson
Shelbyville, Tennessee
Attorney for Appellee

APPEAL DISMISSED

OPINION FILED:

WILLIAM H. WILLIAMS, SENIOR JUDGE

CONCUR:

CRAWFORD, P.J., W.S.

HIGHERS, J.

This is an appeal from the Probate Court of Marshall County, Tennessee by the Estate of Maxie Raymond Childress, Jr. contesting the order of that court dismissing appellant's petition to set aside an alleged fraudulent conveyance of real estate by the deceased intestate and to require payment of the proceeds from the sale of the land to the insolvent estate for purposes of paying certain debts owed to creditors of the deceased and any remainder to be paid over, pro rata, to the seven heirs of the intestate. The sole issue is whether the prior conveyance of real property by the deceased intestate to one of his daughters who is an heir was a fraud upon the creditors of the deceased.

However, the threshold inquiry by this Court is: Does this Court have the plenary jurisdiction to entertain this appeal? We find that it does not and the appeal must be dismissed.

Tennessee Rules of Appellate Procedure 13(b) states:

Consideration of Issues Not Presented for Review. Review generally will extend only to those issues presented for review. The appellate court shall also consider whether the trial and appellate court have jurisdiction over the subject matter, whether or not presented for review, and may in its discretion consider other issues in order, among other reasons: (1) to prevent needless litigation, (2) to prevent injury to the interests of the public, and (3) to prevent prejudice to the judicial process (emphasis ours).

We find upon examination of the Private Act of the General Assembly creating the Probate Court of Marshall County, Tennessee¹ that said Act provides:

SECTION 1. That there is hereby created a General Sessions, Probate and Juvenile Court in and for Marshall County, Tennessee.

* * * *

SECTION 3. That the Probate Court shall have jurisdiction over all matters over which jurisdiction is now or hereafter vested in Probate Courts.

* * * *

SECTION 10. That the Circuit Court of Marshall County, Tennessee, shall have jurisdiction to exercise, by appeal or otherwise, appellate review of all proceedings of the Court created by this Act.

These sections have not been subsequently amended by the Tennessee legislature.

We, therefore, hold that this Court does not possess plenary jurisdiction to decide this appeal.

¹Tenn. Priv. Acts 1974, ch. 344, §§ 1, 3, and 10.

Accordingly, the appeal is dismissed. Costs shall be paid by the appellant.

WILLIAM H. WILLIAMS, SENIOR JUDGE

CONCUR:

W. FRANK CRAWFORD, P.J., W.S.

ALAN E. HIGHERS, J.